RECENT TRENDS IN HUMANITIES AND SOCIAL SCIENCES

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CHAPTER 13

INDIGENOUS PEOPLES' DISPUTE SETTLEMENT MECHANISM: A SOCIO–LEGAL STUDY OF BEDA (BUDGA) JANGAM COMMUNITY

Dr. VIBHUDI VENKATESHWARLU
Post-Doctoral Fellow, School of Law Rights and Constitutional Governance, TISS, Mumbai

Introduction

History: The Beda (Budga) Jangam Community traced out from "*Nallamala*" Forest historically, and its adjacent places of Nalgonda, Mahabubnagar, Prakasham, Guntur, and Kurnool Districts of present Telangana and Andhra Pradesh States. Around 12th Century due to various reasons[1] this community people were spread over the plain areas of Telangana, Andhra Pradesh, Karnataka, and Maharashtra states in South India. This community has unique way of indigenous knowledge of singing and dancing, food gathering, hunting, traditional medication,[2] is always an honourable profession in India[3] and Astrology. This community has primitive traits, distinctive culture, isolated from mainstream, shyness, and facing poverty. This community has their own language called *Paradeshi*[4] and *Marugu*

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1 Selling of Forest Produce, Cultivation of Land in Plans, Propagation of Lingayath Religious Principles, Introduction of the Criminal Tribes Act, 1871 are some of main reasons to settlement in plans.

2 Syed Siraj-Ul-Hassan (1920) the Caste and Tribes of H.E.H the Nizam's, Dominions, p.407

3 Edgar Thrurston & Rangachary. K (1909) Castes and Tribes of Southern India, Vol. 1, Government Press, Madras, p.45

4 People like Gypsy, Nomadic, Semi-nomadic Peoples speak in ParadeshiBhasha when they interact with each other and in front of other community people the communicate with their own language of Paradeshi Bhasha.

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(hide),[5] the community people interact with their own language when they are communicating before the outsiders. Using this traditional knowledge is helping them to survive even in the modern time.[6] But this traditional knowledge, language, and traditional practice is declining day to day due to modern education, modern form of occupations, and dominant religious notion of pure and impure propagation of these practices yet present time[7] and this indigenous knowledge is degrading. There is no encouragement from the government, or educational institutions, or any other agencies in India or abroad to improve their indigenous traditional knowledge and language scientifically.

This indigenous/aboriginal community, constitutionally recognised as Scheduled Caste,[8] without any research work or study.[9] Though they were included in the Scheduled Caste list they are not able to access modern education, employment and politics on par with other Scheduled Castes, they are not in part of governance, this community completely outside of the governance whether local, state or union. Their children are not going to schools, most of the time, they are involved with traditional occupations by helping their parents[10] and their children are drop out at primary stage of

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5 Language of Beda (Budga) Jangam it is similar to the language of ParadeshiBhasha

6 Most of this community people are doing their traditional practices of traditional mendicants, singers, dance performers, astrologers, in metropolitan Cities of Hyderabad, Bangalore, Mumbai, Chennai, Delhi and Kolkata and their peripheries and Telangana, Andhra Pradesh, Karnataka, Maharashtra States.

7 Bad Propagation by Print and Electronic media, on the basis of scientific reliability, scientific tempore and universal validity etc.

8 S.R.O.385, Dated 11th August, 1950, issued by the President of India under clause (1) of Article 341 of Constitution of India, notified only in Hyderabad State. The Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976, Act. No. 108 of 1976, Dated 20th September, 1976 included in the State of Karnataka, Maharashtra, Andhra Pradesh.

9 Andre Beteille (1998) The Idea of Indigenous People, Vol.39, No.2 (April 1998) Current Anthropology, pp.187-192 (page no.188).

10 Vaddagere Nagarajaiah (2016) Budga Jangam, Dr.B.R. Ambedkar Research Institute, p.261.

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education. Their traditional occupations are declining one side and their education status is very poor (dropping out at primary level) is other side of problem, yet this community is very poor, they living huts, and tents, they doing begging and traditional mendication[11] in the streets for their livelihood. Because, their inclusion in Scheduled Caste list, they are losing their independence of autonomous in dispute settlement practice among their communities, the Kerala High Court in ***Bini. B vs. Jayan P.R.***[12] held that members of the tribe cannot invoke the provisions of Hindu Marriage Act, unless there is a notification issued by the Central Government making the Act applicable to the tribe.

Problems with Modern Judiciary in India

Present judiciary in India is facing problems of corruption,[13] pendency, delay in disposal instead of such problems, facing critique like there is no diversity in higher judiciary, there is no adequate judges, delay in appointment of judges,[14] there are political influences in appoints of judges,[15] due to which present judiciary in India is not accessible to common man,[16] the judiciary is failed to do justice, none of the citizen will expect justice after a long time of 20 years or 30 years or after his lifetime, the same is directed Supreme Court of India in ***Anil Rai v. State of Bihar***.[17] Due to these reasons

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11 Syed Siraj-Ul-Hassan (1920) Castes and Tribes of H.E.H. the Nizam's Dominions, The Times Press, p.507

12 AIR 2016 Ker 59 : ILR 2015 (2) Kerala 873 : 2015 (3) KHC 173

13 Rajeev Dhavan, Judicial corruption, The Hindu, dated 22.02.2002, available at:

14 The Economic Times, Collegium taking time, not Centre: SC on appointment of judges by Samanwaya Rautray ET Bureau of the Economic Times, dated 23.02.2019. Available at: https://economictimes.indiatimes.com/news/politics-and-nation/collegium-taking-time-not-centre-sc-on-appointment-of-judges/articleshow/68119225.cms

15 Sathe .S.P (1998) Appointment of Judges : The Issues, Vol. 3, No.32 (Aug 8-14) EPW pp.2155-2157

16 Law Commission of India, 2009, Report No.230, Reforms in the Judiciary – Some Suggestions, pp.20-21

17 (2001) 7 SCC 318

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the modern judiciary has lost its credibility, confidence and trust among the society and failed to do the justice.[18]

Pendency: There are 32 million case are pending across the country among which, 3.93 million cases are pending before the Supreme Court of India.[19] 2.07 cases were pending before the High Courts in India.[20] More than 29.7 million civil and criminal cases are pending in the lower courts across the country.[21] These numbers are increasing day to day and year to year.

Time taking process: For the disposal of cases in lower courts is taking time of 5 to10 years in civil cases, sometimes it may be reached 10 to 15 years. 3 to 5 years in criminal cases some cases, it may be reached 5 to 8 years, after disposal of case in trail court or lower courts there are appeal exercising by the parties. Family matters like divorce, maintenance etc. may take time of 10 to 15 years, in some of cases it may be more duration for the disposal of case. There are two civil cases have been pending since 1951.[22]

Corruption: To engage advocate, huge amount need to pay, complex procedure,[23] the present judiciary also facing the problem of corruption, some of judges are involving corruption cases,[24] there is no differences in lower and higher judiciaries in India. Present judiciary facing these problems, due to which it is failed to do justice to parties right time and right manner, it is also losing trust among the people of India, under these circumstances people are looking to

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18 Vibhudi Venkateshwarlu (2013) M.Phil Thesis, submitted to Department of Social Exclusion Studies, EFL University, Hyderabad, p.211

19 https://www.livemint.com/news/india/why-pending-court-cases-have-been-going-up-1549859010699.html

20 http://doj.gov.in/sites/default/files/ASCI%20Final%20Report%20Page%20641%20to%20822.pdf

21 As per the National Judicial Data Grid

22 AlokPrasanna Kumar, How many judges does India really need? LiveMint, dated 12.07.2019, available at https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html

23 Law Commission of India, 2009, Report No.230, Reforms in the Judiciary – Some Suggestions, pp.20-21

24 Rajeev Dhavan, Judicial corruption, The Hindu, 22.02.2002

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alternative judiciary and approaching to caste panchayat and traditional dispute settlement mechanism.

Dispute Settlement Mechanism

Dispute Settlement Body: Caste government, most castes have a permanent governing body,[25] known as traditional dispute settlement mechanism, Like that the Beda (Budga) Jangam community has governing body which has unique character and importance in modern time, especially, when mainstream courts are losing its trust among the society and people are looking towards alternatives for speedy disposal of cases by adopting arbitration methods and techniques. Historically, tribal communities, distinct cultural groups across the country have had mechanisms for settlement of dispute within and across communities, which have evolved in different forms depending on the nature of issues which they have been called upon to address. The colonial period saw a decline in the strength of these mechanisms as they were sought to be replaced by a judicial system more suited to the needs of the colonial government, as a result, these traditional mechanisms were neither nurtured by state administration, nor their decisions recognised as valid by the mainstream judicial system.[26]

Generally, eldest son or elder of in the family becomes ***kulapedda*** for constitution of governing body/panchayat is recruiting elders who are experts in delivering judgements in community. Generally, there are three to five ***Kula Peddalu-Nayagallu*** (elders in their own caste) consisting in their own ***Bhiradu*** (residence of Community) will choose by the parties, to constitute a dispute settlement council for the dispute, sometimes,

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25 Hodson. T.C (1987) India Census Ethnography, 1901-1931, Usha Jain for Usha Publications, p.57.

26 Shukla. V .N (2008) Constitution of India, 11th Edition, Eastern Book Company, p.991.

26 Bijoy .C.R, Shankar Gopalakrishnan, and Shomona Khanna (201) India and Rights of Indigenous People, Asia Indigenous People Pact, p.32.

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outside villagers may be called for dispute settlement (called ***Koradu***). These community councils are temporary not permanent.

Procedure: The procedure and sequence to conduct traditional dispute resolution in Beda (Budga) Jangam Community is well established. The community elders or Kula Peddalu (traditional judges of the community) should follow the customary law, which is community practice, belief, traditions, custom, values coming from their forefathers times immemorial. The customary, un-codified law is main source of law the disputes settled by using commonsense of elders as following manner while conducting the ***thagu***.[27] Dispute settlement process may be divided into seven steps. First, lodge a complaint about the issue before the *Kulapedda* (called as ***Pulla or Muchika)*** the case has been reported to traditional judge the kulapedda may be called as traditional judge (Kulapedda) by the aggrieved party, requesting him to intervene the issue/dispute. Secondly, making accusation or allegation (***Khodi***). Thirdly, telling the story of issue (***Saalu***) this is unique process to hear other side and it is an opportunity to defend case, this is same like a trail conducting in modern courts. Fourthly, giving evidence on oath/ sworn and evidences relating to the issue/dispute and evidences (***Pramanaalu and Sakshalu***). Fifthly, examination of issue by Kulapedda (loo) with examples, sayings, refereeing old cases etc. (***Satuvalu***). Sixthly, decision/judgement, by finding of accusation and punishment (***Thirppu, Thappulu, and Dhandgalu***), Seventhly, Closing or ending of dispute and in this final process of dispute the panchayat may be closed by executing the punishment (***Mugimpu***).[28] This dispute settlement procedure is more strong and easy than the modern procedure following by modern courts. Modern court procedure in India is very difficult and non-transference and which has problems of delay, pendency and corruption.

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27 by following community customs, traditions, beliefs etc. and they explaining old cases, stories, sayings and examples.

28 Venkatesham N.R (1995) Budige Jangala Basha Sahithya Samskruthikamshala Parishilana, Divya Deepthi Prachuranalu, p.229.

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Rule of Locus standi: The victim/effected person or his close relative may approach to Kulapedda/Nayagadu (a head of the community) and articulate such story of issue, or dispute. Than after complaint lodge before the Kulapedda, the Kulapedda may call for the other party/inform about allegations made by the first party to other side party. On intimation of other party, the other party or second party may request the Kulapedda stating that "to take cognigence of dispute" and request him to find out his role in the dispute. On request made by the other the party, the *kulapedda* will conduct trail and will allow to listen the version of first party (***Saalu***) than he may allow to others side of the version (***saalu***). The parties articulate one by one each and every fact of the incidents in the dispute, the *Kulapedda* should listen such articulations their stands or defences for the dispute from both sides of the parties. The *Kulapedda* also allow to witnesses from the both side of the parties who knows about the dispute, if there are witness available they may allow, the *Kulapedda* will examine the parties articulation/evidences by applying his knowledge and experience to find out the truth or real facts from the parties and witnesses and also he has right to allow his own sources of witnesses during the dispute settlement process (called as ***Thagu***).

The *kulapedda* (***Nayagadu***) will deliver the judgement (***thirpu***) in a open place by giving reasons by addressing each and every allegation, by giving valid reasons for the punishment, he also confine the mistakes/offence (***thappulu***) of the parties for the disputes in open court called as ***Thagu***, divide the mistake/offence (***thappu***) accordingly the punishment will impose on the parties. The party who was done mistake (thappu) is decided that he should bear consequences of punishment for the dispute. The results of judgment announce in open place ***Thagu***where all the community people attended and sitting before the *Kulapedda* at panchayat/thagu. The judgement should reasonable and shall accept all the community people who attended the panchayat.

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The decision of Kulapedda in case, not appropriate to anyone in the panchayat/thagu, they may criticise it, defend and prefer for the appeals by calling a senior or expert judge ***PeddaNayagadu***, he may be same village (Bhiradu) or from other village (by process called as ***Koradu***). The dispute may be settled in appeal stage by constituting number of traditional judges from different villages.[29] The appeal is final, the parties shall bear the entire expenditure of the dispute and expenditure of Kulapedda and Kulam (community people) who actually attended for the dispute (the procedure called as ***Acharam***).

The disputes resulting punishments, and punishments are imposing in the form of fine, compensation, social boycott, and excommunication etc., if not obey the punishment imposed by the Kulapedda/PeddaNayagadu they may impose social boycott and excommunication which is ultimate punishment and highest form of punishment in the community. The social boycott resulting that no same community person will interact with him, no marriages take place with his family, no celebrations and other form of social gatherings will share with him, no community person will talk with him and there are other forms of imposition of punishments are prevailed.

At present time the disobeying parties are approaching to modern courts, parties are approaching directly to the modern courts to escape from the liability and punishment. Even than most of the community people approaching community heads (Kulapedda/ Naygadu) for intervention of their disputes, but if both the parties interested to settle their dispute in the community council then they conduct trials (*Thagu*), if parties are not interest to approaching modern courts, but most of the parties suffering with modern

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29 Vibhudi Ramachandram, Age: 60 years, Community Head/Kulapedda, Gonakole, Gundlapalli, Nalgonda, interviewed on .03.02.2019.

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judiciary for the delay, pendency, corruption, expenses and favourism, non-transference etc.[30]

Common Disputes

Type of Disputes: This Beda (Budga) Jangam community also have traditional dispute settlement system, they settle their dispute relating to marriage, divorce, inheritance, succession, maintenance, adoption, guardianship, money lending and other contractual issues, and disputes relating to partition, neighbouring disputes, adultery, bigamy.

Divorce: Customary Divorce is permissible and is settled by the JatiPanchayat (Caste Dispute settlement Mechanism) in case of misconduct or barrenness and only men can seek divorce,[31] and some time women can also seek divorce.[32] However, the customary practices like marriage, divorce, succession and inheritance are the tribal unwritten traditional legal principles, which needed to codify and govern the indigenous people who are have distinct cultural practices the Supreme Court of India in ***MadhuKishwar and Others vs. State of Bihar***[33] held that a proper study of customary codes of the tribal's should be made and the same may be codified property. Some State governments have already action to codify the personal laws of important tribal groups. Customary Divorce may be demanded by the male person on the grounds of non-procreation of children, (male child or female child), to perform traditional occupations, to solve the problems of property issue. Female may be seeking divorce on the grounds of disobedience of community rules,

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30 DudhurkuriRamulu S/o.Ramchandraiah, Age about 40 years, Occupation: Kulapedda, Midjil, Mahabubnagar District, Mobile No.9440389542.

31 Singh. K.S. (1995) the Scheduled Castes, Oxford University Press, p.206

32 Articulated by number persons and community elders during the authors field study.

33 AIR 1996 SC 1864 : 1996 (5) SCC 125 (Para 29 of judgment).

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harassment, impotency or incompatibility and adultery.[34] Remarriage is allowed in this community, remarriages allowed for Widows, Widowers, and divorcees. Customary divorce is allowed by modern law and court provided parties has to prove that the couples were dissolved their marriage with customary divorce by producing evidence and witness before the court of law.[35]

Relating to family disputes there is unique practice called ***Marraa*** (keeping observation and vigilance by Kulapedda) which is very good concept in the community, in olden days the community people conducted child marriages at age of 7 years, 10 years, due to early marriage the couples are not mature and majors, there are chances of harassment, humiliation against the bride, therefore to remove those harassments the community elders were introduced the concept of ***Marra*** times immemorial, which resulting good behaviour, obedience and good conduct of parties, which is leads to growth and happy way of life of couples in the future, it may creates an opportunity to understand each other, in case, the couples misunderstanding they may go for customary divorce by showing others mistakes (***Thappulu***).

Maintenance: Maintenance is very common practice in this community; maintenance may be seeks by wife, children and parents. Guardianship Contract: most of the time the community people fight for the disputes relating to debts, payment, repayment and interest amount. The dispute may arise on repayment, interest relating to time and promise of payment and repayment issues. There are other contractual issues of oral or written agreements of land, good, gift, lease and sale. Neighbours disputes, hurt and grievous

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34 Singh.K.S (1995) the Scheduled Castes, Oxford University Press, p.202.

35 Swapnanjali Sandeep Patil vs. Sandeep AnandaPatil: AIR 2019 SC 1500 : 2019(2) ALT 189 : I (2019) DMC 714 SC : 2019(2) RCR(Civil) 378 : 2019 (4) SC ALE 173.

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hurt and others. Succession: the eldest son gets more shares in the parental property than others and this is known jyeshtabhagam.[36]

U.N. Declaration

United Nations Declaration on the Rights of Indigenous People's[37]: (herein after called as the declaration) Article 4 of the declaration, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions and Article 18 of the declaration have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 5 of declaration imposing obligations on member states, to ensure protection for the traditional legal governance of Indigenous people, for settlement of their legal disputes by themselves, states shall protect and develop their traditional legal institutions. The article read as follows:

> *"Indigenous Peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate full, if they so choose, in the political, economic, social and cultural life of the state"*

This article 5 of the declaration clearly says that, "if indigenous peoples or a group have distinct cultural, social and economic character[38] is intended to choose their distinct legal institution, while

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36 Singh.K .S (1995) the Scheduled Castes, Oxford University Press, p.203

37 UN General Assembly adopted on 13th September, 2007

38 Helen Quane (2011) *the UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights?* In Stephen Allen & Alexandra Xanthaki (Edited. Vol. 30) Reflections on the UN Declaration on the Rights of Indigenous Peoples, Hart Publishing Company, 275

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retaining their right to participate in full, the state is under obligatory to protect, recognise and ensure their distinct legal practice".

India is member and ratified the declaration[39] and voted for the favour the convention/declaration, therefore India is under obligation to implement the declaration. India is not ready to implement the declaration, moreover, it has deny to accept the concept and protection of indigenous people, however, India dealing the concept of Indigenous people under the concept of Tribe. The declaration is not arbitrary creation, specially, in favour of Beda (Budga) Jangam community individuals; it is collective and necessity product of good obedience. The declaration is functional autonomy to some groups in the country[40] like Beda (Budga) Jangam. The declaration is made to serve the legitimate interest of indigenous peoples including Beda (Budga) Jangam community. The concept of self-determination under the declaration as a means of ensuring adequate protection for their rights and legitimate interest which are traditionally conceived,[41] the object of the declaration is to the state parties shall ensure self-governance; ensure protection of their own legal mechanism for disputes among the indigenous communities, which is not a concurrent governance of state providing mechanism, which is effective participation, autonomy for the indigenous groups.[42]

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39 https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html retrieved on 02.05.2019

40 Helen Quane (2011) *the UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights?* In Stephen Allen & Alexandra Xanthaki (Edited. Vol. 30) Reflections on the UN Declaration on the Rights of Indigenous Peoples, Hart Publishing Company, p.274

41 Helen Quane (2011) *the UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights?* In Stephen Allen & Alexandra Xanthaki (Edited. Vol. 30) Reflections on the UN Declaration on the Rights of Indigenous Peoples, Hart Publishing Company, p.279

42 Helen Quane (2011) *the UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights?* In Stephen Allen & Alexandra Xanthaki (Edited. Vol. 30) Reflections on the UN Declaration on the Rights of Indigenous Peoples, Hart Publishing Company, p.282

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Constitution of India

Indian Constitution & Rights of Indigenous Peoples': The Scheduled Tribe is defined under Article 366 (25) and Article 342 defined who is the scheduled tribe, what is Schedule defined under Article 366 (23) of the Constitution of India.[43] To deal for governance of tribes and who dealing as indigenous people, there is no specific classification as indigenous people in India; they are dealing under the concept of tribe in India protections were made under the Constitution of India and claiming all to its people as indigenous.[44] However, the Constitution of India is not directly encouraging the right to self-determination, but it is promoting democracy, participation in governance, freedom of speech etc. under the concept of reservation policy but the concept of the tribe is different with indigenous people.[45]

Right to Self-determination: The right to self-determination and right to choose distinctive legal institution includes, right settle their disputes as per the custom and practice of indigenous people. In India number of cases recognised and permitted the traditional legal settlements of marriage, customary divorce, succession, has been permitted/allowed by the modern court of law. The Andhra Pradesh High Court in ***Dukku Labudu Bariki vs. Sobha Hymavathi Devi and Ors***[46] has held that the customary divorce is socially permitted among all the Tribal Communities and it is very easy to get among the tribal groups. The autonomy and assurance has given to tribes for their legal governance.[47] Customs are permitted and practice among the tribes in matters like succession and inheritance marriage, divorce, the Supreme Court of India in ***MadhuKishwar and Others***

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43 Shukla. V .N (2008) Constitution of India, 11th Edition, Eastern Book Company, p.991

44 Bijoy .C.R, Shankar Gopalakrishnan, and Shomona Khanna (201) India and Rights of Indigenous People, Asia Indigenous People Pact, p.1

45 VirginiusXaxa (1999) Tribes as Indigenous People of India, Vol.34, No.51 (Dec.18-24, 1999) EPW, pp.3589-3595

46 2003 (4) ALD 138, (Para 44 of judgement)

47 2003 (4) ALD 138, (Para 44 of judgement)

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vs. State of Bihar[48]held that Section 2 of the Succession Act, allowed to groups which are have distinctive special customary law on succession and inheritance apart from other customs like marriage, divorce etc. "Customs became part of the tribal laws as a guide to their attitude and practice in their social life and not a final definition of law. They are accepted as set of principles and are being applied when succession is open. They have accordingly nearly acquired the status of law."

Legal Position: Section 2 (1) (c) of Hindu Marriage Act, 1955 says that this Act applies to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu Law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. And Section 2 (2) of Hindu Marriage Act, 1955 says that Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

Hindu Succession Act, 1956 in Section 2 of the Hindu Succession Act, 1956 has defined and applied same wording for application of Hindu Succession Act in India. The same wording has been used under Section 3 of the Hindu Minority and Guardianship Act, 1956, and Section 2 of the Hindu Adoptions and Maintenance Act, 1956.

Explanation for the Section 4 of the Special Marriage Act, 1954, explained as ["in this section, "custom", in relation to a person belonging to any tribe, community, group or family, unless the state Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family: Provided that no such notification shall be issued in

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48 AIR 1996 SC 1864 : 1996 (5) SCC 125, (Para 31 of judgment)

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relation to the members of any tribe, community, group, or family, unless the State Government is satisfied (i) that such rule has been continuously and uniformly observed for a long time among those members; (ii) that such rule is certain and not unreasonable or opposed to public policy; and (iii) that such rule, if applicable only to a family, has not been discontinued by the family.][49] As per the Section 3 of the Indian Succession Act, 1925 Power of the State Government t exempt any race, sect or tribe in the state from operation of Act, the State Government may, notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any the following provisions of this Act, namely, section 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the State, or of any part of such race, sect or tribe, to whom the State Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order. Section 3 (2) the State Government may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect. Section 3 (3) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 1865 under section 332 of that Act are in this Act referred to as "exempted persons." The Hindu religion also has special custom relating to marriage, divorce, succession and inheritance etc. in several places and several castes, sects and groups. The Supreme Court in ***Gurdit Singh vs. Angrez Kaur and Ors***[50] a three judges bench held that if there be a special custom of marriage, divorce can be restored to even by Hindus.

The legal position of the Tribe, group, sect, community of family may have special customs relating to marriage, divorce, succession and inheritance, adoption, guardianship, and maintenance etc. shall be recognised and state government shall issue notification

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49 Inserted by Act 32 of 1963, S.2 (w.e.f.22.09.1963)

50 AIR 1968 SC 142, [1967] 3SC R789

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in official gazette such acceptance or recognition about their special customs. Than their customary practice relating to marriage, divorce, adoption, guardianship, succession is valid otherwise, not valid in the eye of mainstream court of law. Similarly, many tribal areas and groups have traditional mechanisms for the settlement of disputes which remain unrecognised by the mainstream legal system but nevertheless continue to have social acceptance.[51]

But most of the Beda (Budga) Jangam community people are not interested to approach the modern judiciary;[52] they are settling their disputes relating to almost all cases civil in nature, before the community councils or caste panchayats.[53] The modern judiciary is failed to do justice as speedy,[54] fair, corruption free, cost effective, and favourism.[55] In Supreme Court and High Courts huge vacancies are there from 1992 onwards, because of various reasons,[56] the government is keep maintaining vacancies, to escape from the liabilities of politicians,[57] higher officials and others.[58] There is no diversity in higher judiciary in India,[59] only majority of judges

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51 Bijoy .C.R, Shankar Gopalakrishnan, and Shomona Khanna (201) India and Rights of Indigenous People, Asia Indigenous People Pact,p.33

52 VidhiDoshi, India's Long Wait for Justice: 27m Court Cases Trapped in Legal Long Jam, the Guardian, Date.05 May, 2016

53 Duddhukura Ramulu, age about 45 years, Community Head/Kulapedda in Midjil, Mahabubnagar District Telangana State, interviewed on 06.05.2019 and a video recorded about their panchayat mechanism among their community.

54 Law Commission of India, 2009, Report No.230, Reforms in the Judiciary – Some Suggestions, p.14

55 Kadamanchi Sahadevudu, Age: 43 years, Community head/Kulapedda in Alwal, Hyderabad, Telangana State, interviewed and a video recorded about the community panchayat/caste panchayat mechanism on 20.04.2019

56 VidhiDoshi, India's Long Wait for Justice: 27m Court Cases Trapped in Legal Long Jam, the Guardian, Date.05 May, 2016

57 SC pulls up states, High Court for delay in filling up judges' vacancies,

58 Vibhudi Venkateshwarlu (2015) Social Diversity and Judiciary in India and Bhutan, GNH Bhutan

59 The Hindu, Appointment of judges: Delay in Justice KM Joseph's elevation to SC leads to apolitical slugfest, Hindu Business, dated 26th April, 2018, available at:

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coming from upper caste Brahmins, Reddies and other upper castes who studied elite institutions and foreign universities, and from elite community of judge's families, lawyers, engineers.[60] It is very difficult and impossible task for the lower communities and poor people to enter into higher judiciary though they have talent, quality and so called merit by present appointment process.[61]

Traditional dispute settlement mechanism of the Beda (Budga) Jangam Community is more appropriate for the present time, because, speedy disposal cheep/cost effective, and it will reduce burden of the modern judiciary. The modern Judiciary is not indigenous system adopted from the west. The indigenous system is good there was no homicide in family disputes, it working like prevention of offences among the community people. These indigenous dispute settlements are checking the behaviours of the parties, this will increase good behaviour, and good conduct which resulting low crime and low dispute. Indigenous settlement system of Beda (budga) Jangam community is resulted zero homicide offences among the community.

The present modern judiciary has failed to do justice to common man,[62] including indigenous people, their culture, tradition, belief, practice and custom is different with other people/other society. Therefore, the Article 5 of the declaration is solution for the indigenous groups, like Beda (Buga) Jangam community to settle their disputes themselves. The state and modern judiciary shall recognise their orders/decisions, to ensure speedy justice for the community.

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https://www.thehindubusinessline.com/news/national/not-elevating-uttarakhand-cj-to-sc-exposes-pms-revenge-politics-congress/article23680568.ece

60 George H. Gadbois Jr. (2011) Judges of Supreme Court of India 1950-1989, Oxford University Press, p.559.

61 Vibhudi Venkateshwarlu (2013) M.Phil Thesis, submitted to the Department of Social Exclusion Studies, EFL University, Hyderabad, p.211.

62 Law Commission of India, 2009, Report No.230, Reforms in the Judiciary – Some Suggestions, pp.20-21.

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Conclusion

1. Indigenous legal institutions are the best solutions for the dispute settlement at present time, especially, poor communities like Beda (Budga) Jangam, they are not able to afford with modern judicial process. Modern judicial process is complex, time taking, expensive.[63]
2. The modern judiciary itself facing various problems like, vacancies of judges, delay in appointments of judges, pendency of cases, which are leading to injustice to the poor people like Beda (Budga) Jangam Community, this community is completely outside of the society they are not in the governance, employment and economic opportunity.
3. The modern judiciary also facing critiques of corruption, favarism, bias, and also judges are expecting postings after their retirement as a judge.
4. The Indigenous legal institutions will reduce burden on modern judiciary, cases like marriage, divorce, succession and inheritance will decide by the community elders are more convenient than regular court, especially, poor people like Beda (Budga) Jangam community have best traditional settlement techniques, which are useful to the entire society.
5. Autonomy in dispute settlement of tribe will enhance the respect in international forums, it is also ensure and protect the indigenous people rights and respect the international conventions and declarations.[64]
6. Finally, autonomy of dispute settlement for the Beda (Budga) Jangam community will ensure implementation of declaration, and ensure their development, self-determination and participation in governance.

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63 Law Commission of India, 2009, Report No.230, Reforms in the Judiciary – Some Suggestions, pp.20-21.

64 India is under obligation to implement the U.N. Convention on Rights of the Indigenous People

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